RECORD AND BRIEFS

Supreme Court, U.S.
FILED
MAY 23 2011
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No. 10-1327

IN THE

Supreme Court of the United States

JUSSI K. KIVISTO, PETITIONER

v.

THE FLORIDA BAR

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

SUPPLEMENTAL BRIEF

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pro se

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Supreme Court Rule 15.8, Petitioner submits this supplemental brief, calling the Court's attention to the decision of the Supreme Court of Florida (FSC) issued May 12, 2011. (the 5/12/2011 Decision). Supp. App. 1sa-5sa

Ten months after Petitioner filed his Response to Order to Show Cause (Pet. App. 8a-24a), two weeks after the petition for writ of certiorari was docketed with this Court, and three days after the Respondent waived its right to respond to the petition the FSC issued the 5/12/11 Decision, in substance, defending the rulings Petitioner challenged in the petition for writ of certiorari. The FSC, in substance, states that the petition for writ of certiorari is meritless.

Certainly, a response in opposition from the Respondent would have to include more than similar *ipse dixits.*

Through out the proceedings below the FSC has permitted Respondent to skate by without filing responses to any of the three categories of writs filed by Petitioner as described in ¶ 5 of the Response to Order to Show Cause. Pet. App. 9a

It is time for the Respondent to engage.

The 5/12/11 Decision underscores that the FSC has permitted this matter to become personal, clouding its judgment to such an extent that the FSC has fallen into serious constitutional error. Far from dispelling the constitutional concerns set out in the petition for

certiorari the 5/12/11 Decision reinforces the compelling need for this Court to grant certiorari.

The FSC states that Petitioner "never filed a timely initial brief on the merits. Instead, he continued filing motions....in an attempt to delay...

A fair minded observer would conclude that Petitioner never filed his initial brief but, instead continued filing motions...in an attempt to delay... This conclusion, as the FSC knows, would be false.

Petitioner filed his brief three (3) days late, explaining to the FSC the reason for the late filing and requesting that, due to mistake, the brief be accepted as timely. [1] Supp. App. 6sa-8sa.

Respondent filed an answer to Petitioner's untimely brief; Petitioner filed a reply.

---

[1] Within the 35 day period Petitioner prior, to filing with this Court an application for a stay (09A1239) of the May 20, 2010 Order in which the FSC, *sua sponte*, suspended Petitioner from the practice of law, Petitioner filed for stay with the FSC. During this flurry of filings Petitioner became "locked" in the erroneous belief that his brief was due on June 28; the brief was due on June 24; Petitioner realized his mistake on June 25 when the brief was already late; but filed the brief requesting that the brief be accepted as timely. That Petitioner made the mistake is corroborated by his email to the clerks of this Court of June 22, 2010 wherein Petitioner states "my next pleading is not due until 35 days from 5/20/2010, that is, June 28, 2010. Supp. App. 6sa-8sa Petitioner cited *Krupski v. Costa Crociere*, 130 S.Ct. 1133 (2010) to the FSC in a subsequent filing. A mistake is mistake, not a failure to heed "the Court's direction".

On September 28, 2010, a week after Petitioner filed *Kivisto v. Soifer*, et al, 10-61758-UU (S.D.FL) (Kivisto II) (Pet. App. 18) the FSC, *sua sponte*, exercising its discretion, struck all the briefs and directed the clerk to treat the proceedings as uncontested. Pet. App 1a-2a

Regardless, the "untimely" filing issue is a red herring. Since the FSC had decided, *a priori*, without a response from Respondent, that Petitioner's arguments were "meritless", whether the arguments were included in a timely brief or a 3-day untimely brief is a distinction without a difference. To state that these arguments should have been included in a timely brief is disingenuous. [2]

Justice Robert Jackson warned, while serving as Attorney General, that the power to initiate proceedings poses the greatest danger to rights when "law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself." See *Morrison v. Olson*, 487 U.S. 654,728 (1988) (Scalia, J., dissenting) (quoting Robert Jackson, The Federal Prosecutor,

---

[2] Also on May 20, 2010 the FSC struck Sections I, II, and the Appendix from Petitioner's March 17, 2009 Petition for Review, effectively preventing Petitioner from making its "meritless" arguments in his initial brief. The FSC appears to have accepted Respondent's circular argument that since prosecutorial misconduct was not part of the record, Petitioner could not now put prosecutorial misconduct in the Petition for Review.

Address Delivered at the Second Annual Conference of United States Attorneys, April 1, 1940.

As Justice Black, in dissent, stated in *Cohan v. Hurley*, 366 U.S. 117, 138, 148-149 (1961):

> The legal profession, with responsibilities as great as those placed upon any group in our society, must have that independence. If it is denied them, they are likely to become nothing more than parrots of the views of whatever group wields governmental power at the moment. Whenever that has happened in the world, the lawyer, as properly so called and respected, has ceased to perform the highest duty of his calling and has lost the affection even the respect of the people.
>
> .....
>
> For if the legal profession can, with the aid of those members of the profession who have become judges, exclude any member it wishes even though such exclusion could not be accomplished within the limits of the same kind of due process that is accorded to other people, how is any lawyer going to be able to take a position or defend a cause that is likely to incur the displeasure of the judges or whatever group of his fellow lawyers happens to have authority over him? The answer is that, in many cases, he is not going to be able to take such a position or to defend such a cause and the public will be deprived of just those legal services that, in the past, have given lawyers their most *bona fide* claim to greatness.

In note 3 of the 5/12/11 Decision the FSC refers to a Petitioner's petition for writ of mandamus which the FSC denied, without response from Respondent, on May 20, 2010. Supp. App. 9sa-38sa.

In its March, 2009 Rule 26 disclosures in *Kivisto v. MillerCanfield et al.* 08-61519-MGC (S.D.FL) (Kivisto I) (Pet App 18) Respondent's prosecutors, for the first time, admitted being in possession of Petitioner's Confidential File which they refused to produce. Since the Confidential File would show the circumstances of the Respondent prosecutors' fabrication of evidence Petitioner (unable to obtain the Confidential File in Kivisto I) filed with the FSC Motions to Compel. When the FSC failed to rule Petitioner filed a public records request with Respondent seeking the Confidential File. When Respondent denied Petitioner's public records request Petitioner appealed the denial to the FSC by way of a petition for writ of mandamus.

The Respondent refused to produce the Confidential File for the same reason that President Nixon stonewalled on the Watergate tapes. As this Court stated in *United States v. Nixon*, 418 U.S. 683, 709 (1974):

> The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defence.

The hurdles for mandamus under Florida law are the same as they are under federal law. As Justice Kennedy, delivering the opinion of this Court, stated in *Cheney v. United States District for D.C.* 542 U.S. 367 (2004) hurdles in mandamus, "however demanding, are not insuperable". See also *NAACP v. Alabama ex. rel. Patterson*, 357 U.S. 449 (1958); *Bouie v. City of Columbia*, 378 U.S. 347 (1964)

Petitioner's March 9, 2011 Motion to Compel Production Pursuant to Rule 45 Subpoena filed in Kivisto II makes a compelling case that the crime-fraud exception vitiates Respondent's claims for privilege and confidentiality. Supp. App. 39sa-47sa

Why the Respondent is exempt from the disinfectant properties of sunlight remains a mystery.

The 5/12/11 Decision effectively prevents any future Leon Jaworski from raising the corruption of the judicial process before the FSC. If and when Petitioner obtains possession of the Confidential File in federal proceedings showing the corruption of the judicial process no Florida licenced attorney will risk the wrath of the FSC or Respondent by submitting the documents before the FSC. The chilling effect of the 5/12/11 Decision on Petitioner's First Amendment right of access to the courts is constitutionally intolerable and reinforces the compelling need for this Court to grant certiorari.

This proceeding forms part of a trilogy. In Kivisto I Petitioner's petition for writ of certiorari is due on July 5, 2011 with this Court; in Kivisto II Petitioner's appeal brief to the Eleventh Circuit is due

on June 2, 2011. Since Kivisto II has a ruling on prosecutorial immunity Kivisto II will come before this Court, regardless of the outcome. Ideally all three petitions should be considered by this Court as a whole at the same time.

This Court should grant certiorari to remedy and deter the oppressive government conduct set out in the petition for certiorari—which, significantly, both violates and chills the future exercise of fundamental constitutional rights.

The deterrence interest is especially strong where, as in this case, the wrongful conduct will, if left unremedied, chill the future exercise of rights by similarly situated attorneys other than the Petitioner. Petitioner threatened powerful corporate law firm interests simply by probating for his foreign clients an estate in Florida when the corporate law firm, stating that the claims exceeded the assets, told him not to.

The FSC decisions, by permitting powerful corporate law firms to use state bar disciplinary procedures to advance their commercial interests, render Petitioner and other attorneys who may be unpopular with state bar officials less secure of their rights because it denies them a means to deter abuses of the judicial system.

This Court's review is necessary to restore public confidence in the judicial process.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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lsa

SUPREME COURT OF FLORIDA

No. SC07-2281

THE FLORIDA BAR, Complainant,

vs.

JUSSI KUSTAA KIVISTO, Respondent.

[May 12, 2011]

PER CURIAM.

Jussi Kustaa Kivisto was the subject of a Florida Bar disciplinary proceeding.1 On March 17, 2009, Kivisto filed a petition for review of a referee's report that recommended he be disbarred. During the course of the proceedings, Kivisto filed numerous motions and writ petitions. In fact, in this matter, Kivisto submitted over 120 filings with this Court, the bulk of which were repetitive and meritless. In addition, despite the fact that it was Kivisto who sought review of the referee's report and recommendation, he failed to timely file an initial brief on the merits. On May 20, 2010, the Court issued an order specifically informing Kivisto that no further extensions of time would be granted for him to file an initial brief on the merits and ordering him to file his initial brief on the merits within thirty-five days or his petition for review could be subject to dismissal. See Fla. Bar v. Kivisto, No. SC07-2281 (Fla. May 20, 2010); see also Fla. R. App. P. 9.410 (Sanctions). Despite this clear warning, Kivisto failed to heed the Court's direction, and never filed a timely initial brief on the merits. Instead, he continued filing motions to toll,

motions to stay, an amended motion to stay, requests for oral argument, unauthorized requests, and other pleadings, in an attempt to delay the progress of his disciplinary case.2 The volume of repetitive and meritless filings, coupled with Kivisto's failure to proceed with his case by filing his initial brief, is an abuse of the Court's limited resources.3

Because of his repetitive and meritless filings, on July 9, 2010, this Court ordered Kivisto to show cause why the Court should not direct the Clerk of the Court to "reject for filing any future pleadings, petitions, motions, letters, documents, or other filings" submitted by him to the Court unless signed by a member of The Florida Bar other than Kivisto. See Fla. Bar v. Kivisto, No. SC07-2281 (Fla. July 9, 2010). In his response to the order, Kivisto continued to present arguments regarding the disciplinary case, which should have been included in a timely filed initial brief. Further, Kivisto challenged the Court's denials of his previous filings. Kivisto has failed to show good cause why sanctions should not be imposed for his numerous repetitive filings. We now sanction him.

Both this Court and the United States Supreme Court have, when deemed necessary, exercised the inherent judicial authority to sanction an abusive litigant. See, e.g., Martin v. D.C. Court of Appeals, 506 U.S. 1 (1992); In re Sindram, 498 U.S. 177 (1991); In re McDonald, 489 U.S. 180 (1989); Fla. Bd. of Bar Exam'rs re Ramos, 17 So. 3d 268 (Fla. 2009); Fla. Bar v. Thompson, 979 So. 2d 917 (Fla. 2008); Hamilton v. State, 945 So. 2d 1121 (Fla. 2006); May v. Barthet, 934 So. 2d 1184 (Fla. 2006); Sibley v. Fla. Judicial Qualifications Comm'n, 973 So. 2d 425 (Fla. 2006). The need for such a sanction lies in the

protection of the rights of others to timely review of their legitimate filings. See Martin, 506 U.S. at 3 (imposing sanction where petitioner's filings for certiorari review had a deleterious effect on the Court's fair allocation of judicial resources); Sibley, 973 So. 2d at 426. The resources of our court system are finite and must be reserved for the resolution of genuine disputes. See Peterson v. State, 817 So. 2d 838, 840 (Fla. 2002). As noted by the United States Supreme Court, "Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." In re McDonald, 489 U.S. at 184.

After considering Kivisto's response to the order to show cause, we conclude that he has abused this Court's processes by filing a multitude of petitions and motions that repeatedly present the same unwarranted arguments. Kivisto's actions create a drain on the Court's limited time, for with each filing the Court must review and consider his repetitious and meritless arguments. Therefore, we conclude that a limitation on Kivisto's ability to file in this Court would further the constitutional right of access because it would permit the Court to devote its finite resources to the consideration of legitimate claims filed by others.

Accordingly, in order to preserve the right of access for all litigants and promote the interests of justice, the Clerk of this Court is hereby instructed to reject for filing any future pleadings, petitions, motions, letters, notices, or other filings submitted by Jussi Kustaa Kivisto that challenge the disciplinary proceedings

considered by this Court in Florida Bar v. Kivisto, 49 So. 3d 747 (Fla. 2010), or are related to his potential readmission to The Florida Bar, unless the filings are signed by a member in good standing of The Florida Bar.

Under the sanction herein imposed, Kivisto is not being denied access to the courts; that access is simply being limited due to his abusiveness. Kivisto remains eligible to seek readmission to The Florida Bar, once he has completed the five year period of disbarment, with the requirement that the filings are signed by a member in good standing of The Florida Bar. However, we cannot tolerate Kivisto's continued inability to abide by the legal processes of the judicial system. If Kivisto submits a filing in violation of this order, he may be subjected to contempt proceedings or other appropriate sanctions, including permanent disbarment. See R. Regulating Fla. Bar 3-5.1(f)("Permanent disbarment shall preclude readmission.")

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Original Proceeding – The Florida Bar

John F. Harkness, Jr., Executive Director, and Kenneth Lawrence Marvin, Director of Lawyer Regulation, The Florida Bar, Tallahassee, Florida, and

Michael David Soifer, Bar Counsel, The Florida Bar, Sunrise, Florida, for Complainant

Jussi Kustaa Kivisto, pro se, Lake Worth, Florida, for Respondent

Footnotes

1. We have jurisdiction. See art. V, § 15, Fla. Const.

2. In the disciplinary case, the Court approved the report of referee and disbarred Kivisto. See Fla. Bar v. Kivisto, 49 So. 3d 747 (Fla. 2010).

3. Kivisto's filings include four petitions for all writs, six petitions for writs of prohibition, a petition for writ of mandamus, as well as filings vaguely titled "emergency petition for writ." He has repeatedly filed amended versions of the writ petitions. Further, Kivisto has submitted unauthorized filings and filed at least five motions for rehearing regarding the writ petitions and other motions. These filings have not resulted in relief for Kivisto.

SUPREME COURT OF FLORIDA

No. SC07-2281

THE FLORIDA BAR, Complainant,

vs.

JUSSI KUSTAA KIVISTO, Respondent.

MOTION TO ACCEPT BRIEF IN SUPPORT OF PETITION FOR REVIEW AS TIMELY FILED

Respondent respectfully requests this Court to accept as timely filed, Respondent's Brief in Support of Petition for Review, due on June 24, 2010, on the ground of fundamental mistake by Respondent as set out in the attached emails.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular mail to Karusha Y Sharpe, Esq., Greenberg Traurig, 101 East College Ave., Tallahassee, FL 32301; . Michael David Soifer, Esq., Bar Counsel, The Florida Bar, 5900 North Andrews Ave., Suite 900, Fort Lauderdale, FL 33309; Kenneth Lawrence Marvin, Esq., Staff Counsel, and The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399, this 26th day of June, 2010.

Jussi K. Kivisto, Pro Se
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Subj: Brief in Support SC07-2281
Date: 6/25/2010 2:47:47 P.M. Eastern Daylight Time
From: Klfk@aol.com
To: hall@flcourts.org
CC: msoiferzz@flabar.org , kmarvin@flabar.org

6/25/2010

Gentlemen:

I just realized that I had calculated 35 days from May 20, 2010 to end this Saturday, June 26, 2010. How I managed mistake like this is beyond me. But I did make the mistake. I counted it on the calendar several times and marked it on the calendar. By not counting the last two days of May on the calendar I had 30 days ending June 21, 2010. I made the same mistake over and over. The deadline ended yesterday, June 24, 2010.

My plan was to send the Brief tomorrow by Fedex. I shall finish the brief, send it tomorrow by Fedex and let the Court decide whether to accept or it or not.

JK Kivisto

Subj: Application (09A1239) for a stay-Justice Thomas
Date:6/22/2010 8:54:46 A.M. Eastern Daylight Time
From: Klfjk@aol.com
To: dbickell@supremecourt.gov,
cjrapp@supremecourt.gov
CC: cvasil@supremecourt.gov

According the last entries in docket sheet, below, FSC denied the my last request for a stay. According to the May 20, 2010 Final Judgment that I am seeking to have reviewed by certiorari, Exhibit A of the Appendix, my next pleading is not due until 35 days from 5/20/2010, that is June 28, 2010.

The Application is not moot. I do not think the Application will be moot after 6/28/2010.

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. SC07-2281

The Florida Bar File
2006-50,163(15E)

Jussi Kustaa Kivisto
Petitioner

v.

The Florida Bar
Respondent

PETITION FOR MANDAMUS AND/OR OTHER EXTRAORDINARY RELIEF

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1/20/2010

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As administrative head of the Florida Bar, this Court should not abdicate its duty to supervise the Bar. This Court, in the exercise of its supervisory authority over The Florida Bar under Article V, § 15, Florida Constitution, and under the Fourteenth Amendment to the United States Constitution should compel the Florida Bar to produce the "Privileged Portions of Petitioner's Bar Disciplinary File".

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IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. SC07-2281

The Florida Bar File
2006-50,163(15E)

Jussi Kustaa Kivisto
Petitioner
v.

The Florida Bar
Respondent

PETITION FOR MANDAMUS AND/OR OTHER EXTRAORDINARY RELIEF

Petitioner, Jussi K. Kivisto, files his Petition for Mandamus and/or Other Extraordinary Relief to

Compel the Florida Bar (TFB) to produce the "Privileged Portions of Petitioner's Bar Disciplinary File" as set forth below.

I. STATEMENT OF JURISDICTION

This Court has original jurisdiction to issue mandamus under Article I, § 24, Article V, §§ 3(b)(7) & 15, Florida Constitution; R. Regulating the Fla. Bar 1-14.1(a); 3-3.1; 3-7.7(e)&(f); Fla. R. Jud. Admin. 2.420; and, Fla.R.App. 9.030(a) (3). Article V, Section 15, of the Florida Constitution vests this Court with the exclusive authority to regulate the admissions of persons to the practice of law and the discipline of persons admitted.

II. REQUEST FOR ORAL ARGUMENT

Petitioner requests oral argument on this Petition.

III. STATEMENT OF THE FACTS AND OF THE CASE

1. On or about 10/19/09 Petitioner filed a Public Records Request with the Florida Bar; on 10/22/09 Petitioner filed with this Court Motion to Stay Proceedings and all Deadlines Therein; Request to Toll Time; Request for Oral Argument; and, Notice of Filing Public Records Request, (Exhibit A) which Motion to Stay and Request to Toll Time are specifically incorporated herein by reference and renewed herein.

2. Petitioner hereby incorporates herein by reference all pleadings, transcripts, and documents

filed with this Court in these proceedings, Case No. SC07-2281.

3. Petitioner's 10/19/09 Public Records Request had requested the TFB to produce the following documents:

> "Privileged Portions of Plaintiff's Bar Disciplinary File" as set out and described in Plaintiff's First Request to Produce to Defendants Michael David Soifer and Kenneth Lawrence Marvin, certified to have been served June 2, 2009, (Exhibit A) and Bar Defendants' Rule 26 Disclosures, certified to have been served March 23, 2009, (Exhibit B) in the federal civil RICO lawsuit (against *inter alia*, Michael David Soifer and Kenneth Lawrence Marvin) entitled *Kivisto v. Miller Canfield et al.*, Case No. 08-61519-CIV-Cooke/Bandstra, pending in the United States District Court for the Southern District of Florida.

4. By email of 1/5/2010 George Rudge, Records Manager of the Florida Bar, denied the request to produce "Privileged Portions of Petitioner's Bar Disciplinary File". Exhibit B.

IV. SUMMARY OF ARGUMENT

5. As administrative head of the Florida Bar, this Court should not abdicate its duty to supervise the Bar. This Court, in the exercise of its supervisory authority over The Florida Bar under Article V, § 15, Florida Constitution, and under the Fourteenth Amendment to the United States Constitution should compel the Florida Bar to produce

the "Privileged Portions of Petitioner's Bar Disciplinary File" as set our herein.

V. ARGUMENT

6. The Florida Bar is "an official arm of the court." R. Regulating Fla. Bar, ch. 1, Intro. Indeed, the Board's actions are "subject always to the direction and supervision of the Supreme Court of Florida." R. Regulating Fla. Bar 1-4.2(a). Therefore, as the administrative head of the Bar, this Court not only has the authority, but the duty, to require the Bar to follow its own bylaws and policies.

Every day, the Bar holds attorneys accountable for their actions in compliance with the rules of The Florida Bar. See generally R. Regulating Fla. Bar 3-3.1 (designating the Bar as an agency of this Court for the purpose of enforcing the rules of conduct for attorneys). When these rules are not complied with, there are disciplinary consequences to the lawyers. See R. Regulating Fla. Bar 3-5.1 (listing the disciplinary consequences to lawyers who are found guilty of violating the rules). It is not too much to ask for the Bar to comply with its own requirements when we expect lawyers to comply with the requirements of the Bar. See R. Regulating Fla. Bar 1-11.1 (explaining that the Bar's bylaws "govern the method and manner by which the requirements" of the Bar's rules are met).[1]

---

[1] Justice Polston's dissent, joined in by Justice Canady, in *Liberty Counsel v. TFB Board of Governors, et.*al 12 So.3d 183, 196 (Fla. 2009).

7. R. Regulating the Fla. Bar 1-14.1(a) provides:

> (a) **Confidential Records.** All records specifically designated confidential by court rules, the Florida or United States Constitution, statutes, attorney work product, and attorney-client communications shall be confidential. In the event that The Florida Bar objects to production, these records shall not be produced without order of the Supreme Court of Florida or some person designated by the supreme court to decide whether the records should be disclosed.

8. R. Regulating the Fla. Bar 3-7.1(b) provides:

> (b) **Public Record.** The public record shall consist of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, recordings, and/or transcripts of hearings furnished to, served on, or received from the **respondent or the complainant.**

9. R. Regulating the Fla. Bar 3-7.4(h) provides:

> (h) **Rights and Responsibilities of the Respondent.** The respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent

under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or minor misconduct is made, the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

10. ¶ 38 of TFB Complaint states:

38. The motion to compel distribution was eventually settled with respondent agreeing to accept $10,500.00 in attorneys fees for his work on the Aho Estate.

11. At the 11/10/08 hearing Mr. Soifer represented to the Court: (page page 31 of the transcript)

17 He [Kivisto] forced JASA to hire an attorney down
18 here. Thus, costing the estate more money in
19 attorney's fees, to file that motion to
20 compel distribution before he finally agreed
21 to take a fee of $10,500 in the Aho estate.

12. TFB's answers to Respondent' First Request for Admissions:

9. **Q: Admit that Kivisto did not steal from any estate.**
A. Denied.

10. Q. Admit that Kivisto did not commit Medicaid fraud.
A. Objection. Relevancy. Form. Calls for legal conclusion.

13. At Petitioner's 12/31/07 Deposition before the Grievance Committee Petitioner testified under oath:

(p.52)

EXAMINATION
BY MR. MALASKY:
Q Am I correct that this settlement agreement was not completed in a timely fashion, namely being prior to the passing of Johnson?
A Right, and what happened was I answered -- I gave them all of the documents and they wrote back to me and says we are reviewing them, hold up. A month passed.

(p.53)

And that's in fact what happened.
Q And then that further exacerbated the litigation?

A No. There was no litigation at that time.
Q Further exacerbated the litigation under Johnson and --
A No. At this time, there was no litigation.
When we settled the ten thousand dollars, there was no litigation.
MR. ALI: I guess what Bruce is asking you could have deposited or interpled the funds into the court registry at that time.
THE WITNESS: No, that's not what he is asking because what you are not recognizing is we settled this. I submitted the documents to them and they wrote back and says, hold up, we are reviewing them, and that took a month. They reviewed it for a month. Every time I tried to do something, it just sits there.
In the meantime, Mrs. Johnson died, and my position has been that changed the rules, that changed the rules, because then we have the

23 **beneficiaries in Finland who are the owners of the**
24 **money subject to creditor claims.**

14. Petitioner has alleged and alleges, *inter alia*, that TFB together with Susan I. Robbins, Esq., Geoffrey M. Chinn, Esq., MillerCanfield, Brian K. Duffey, Esq. and HodgsonRuss fabricated and conspired to fabricate evidence, namely, that the "**motion to compel distribution was eventually settled with respondent agreeing to accept $10,500.00 in attorneys fees for his work on the Aho Estate.**" [2]

15. In the record before this Court there is no evidence of this "agreement". Such [fabricated] evidence originates, *inter alia*, from the Complainant, Susan I. Robbins, Esq., and is contained in the "Privileged Portions of Petitioner's Bar Disciplinary File".

16. There is more here than just fabrication of evidence. In the penultimate paragraph of page 3 of the Report of Referee Judge Moe states:

> Again, a default having been entered, by operation of law the Respondent is found guilty of the following allegations. **It should be noted, that even if a default had not been entered, the evidence on record shows clearly and convincingly that the Respondent did commit the violations with which he stands accused.**

---

[2] Milja Johnson died 1/6/04; Letters of Administration were issued 4/6/04; Motion to Compel Distribution was settled on 7/14/04.

17. Just what evidence is the Referee referring to? Since there is no evidence in the record the Referee must be referring to "evidence" outside the record. The transcripts of the 11/10/08 Hearing show the Referee stating:

> At 33: The letters in her [Johnson Estate] estate is void too. It's a fraud on the court.
>
> At 38: It [Proof of Service] says a copy of the inventory was mailed to, in effect, his relatives, who were allegedly the heirs.
>
> At 64: [b]ecause I think he had a fear of being found out that the whole Johnson estate was a farce, a total fraud on the court.
>
> At 65: And if that's true, [Milja Johson did not own property in Palm Beach[3] County] Palm Beach County does not have jurisdiction in any way, shape or form over her estate. And if it's true, that the Johnson estate, they ripped everybody off, including Ms. Johnson,

---

[3] Milja Johnson was not a Florida resident and did not own real property in Florida. Petition specifically alleged that Johnson was domiciled in NY. The Palm Bach County Probate Court had jurisdiction over the Johnson Estate. *Pastor v. Pastor*, 929 So.2d 576 (4th DCA 2006) and *Cuevas v. Kelly*, 873 So. 2d 367 (2nd DCA 2004). Also all parties in interest had been been notified in writing of their right to contest jurisdiction. None had done so.

while she was alive. You understand what I mean?

18. The allegation that the Johnson Estate was "a farce, a total fraud on the court" and that "they ripped everybody off" originates, *inter alia*, from the Complainant, Susan I. Robbins, Esq., and such evidence is contained in the "Privileged Portions of Petitioner's Disciplinary File". TFB knows and has known that such allegations are false. TFB at no time contacted or attempted to contact the 4 Finnish intestate Johnson Estate heirs who bore the burden of the compensation. Evidence of such failure to investigate is contained in the "Privileged Portions of Petitioner's Disciplinary File"

19. To the knowledge of TFB Susan I. Robbins, Esq., Geoffrey M. Chinn, Esq., MillerCanfield, Brian K. Duffey, Esq. and HodgsonRuss *via* improper *ex parte* communications with Referee Leroy H. Moe, fixed and conspired to fix these proceedings by representing that the Johnson Estate letters were void; the 4 Finnish intestate Johnson Estate heirs were not Milja Johnson's heirs-at-law, but rather, Petitioner's relatives and/or friends, and/or straw persons in Finland; and, that Petitioner and the 4 Finnish intestate Johnson Estate heirs "ripped everybody off, including Ms. Johnson, while she was alive." This evidence should be contained in the "Privileged Portions of Petitioner's Disciplinary File"

20. The grievance, TFB Complaint, and the Report of the Referee are a farce and a fraud on this Court. Because TFB has a fear of being found out TFB refuses to produce the "Privileged Portions of Petitioner's Bar Disciplinary File".

21. Since "any reports, correspondence, papers, recordings, and/or transcripts of hearings furnished to, served on, or received from the respondent or the complainant" form part to the definition of "public record" as defined by R. Regulating the Fla. Bar 3-7.1(b) such [fabricated] and/or [fixed] evidence are public records and are not exempt from disclosure.

22. However, TFB has an answer as follows:

Additionally, some of the records not meeting the public records definition would also be confidential pursuant to Rule 1-14.1(a) because they are designated as such by court rule, or constitute attorney work product, or attorney-client communications.

23. This puts TFB above the law accountable to no one. Without even providing a privilege log TFB, by fiat, declares that whatever documents are not public records within the meaning of the rules are covered by attorney work product or attorney-client privilege.

24. This cannot stand. Fabrication of evidence and fixing judicial proceedings constitute obstruction of justice under both federal and state law and also constitute violations of 18 U.S.C. §§ 242 & 241. Not even the president of the United States has the absolute power that TFB arrogates to itself. *United States v. Nixon*, 418 U.S. 683, 709 (1974):

> But this presumptive privilege must be considered in light of our historic commitment to the rule of law. This is nowhere more profoundly manifest than, in our view, that "the twofold aim [of criminal justice] is that guilt shall not escape or innocence suffer." *Berger v. United States*, 295 U.S. at 88. We have elected to employ an

> adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. **The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.**

25. The grievance was based on knowingly bad faith allegations of Medicaid fraud. NYC Medicaid has stonewalled Petitioner's Freedom of Information Law requests for evidence of when and in what amounts NYC Medicaid paid benefits on behalf of Milja Johnson. Exhibit C. Petitioner will need to file an Article 78 proceeding in New York in order to obtain the documentary evidence.

26 TFB Complaint was based on the knowingly bad faith allegation that the "**motion to compel distribution was eventually settled with respondent agreeing to accept $10,500.00 in attorneys fees for his work on the Aho Estate.**" TFB has stonewalled Petitioner's request to produce the "Privileged Portions of Petitioner's Bar Disciplinary File".

27. At Petitioner's 12/31/07 Deposition before the Grievance Committee Petitioner testified under oath:

(p.12)

22 Q The Johnson estate tell me in terms of the 23 fees that you collected that you just told us about was
24 that done by virtue of waivers that were executed in
25 connection with closing out that estate?

(p.13)

1 A The fees were agreed to and the fees were
2 agreed to with the beneficiaries and when the fees were
3 agreed to, then it was closed out and they closed -- they
4 executed waivers which are filed with the court. It's
5 the way I have closed every estate that I have done in
6 the last twenty years been done the same way.
7 Q Once you had the beneficiaries execute the
8 waivers, it was your position at that juncture that you
9 were free to take your fees and costs for work performed
10 on the Johnson estate subject of course to your comment

in some of the papers you submitted that you took the risk of anybody objecting?

A We discussed it because at the time of the disbursement at the time of the disbursement Miss Robbins had already filed the complaint, and we saw it basically a continuing of the litigation. In fact, it was a grievance procedure but it was continuing the litigation that she began way back in January and because we saw it and I saw it as her attempt was really to recover for medicaid the money that we were holding. That's how I interpreted it, and I think I interpreted that correctly because if that was not the case, Miss Robbins would have at that time had time to extend the time to file a claim and the Court would have decided that matter.

(p.14)

Q Your position not that we are here to discuss

the medicaid issue was she should have filed that as a class three claim in the probate court or someone on behalf of medicaid to protect medicaid's interest?

A My position is and it's correct at the time she filed the Bar complaint she still had five months to extend the time to file the claim.

Q She never did that?

A No, and because if you look at the reasons to extend the time, one of them is fraud. So she files a claim in Florida saying he defrauded us but didn't go before the Court and say we have the right to extend the claim because he defrauded us because then at least I would have had a chance under the tribunal before Judge Vonhof to argue it. At that time, we still had the money. What I was waiting for was for the two years to run out.

When I talked to the beneficiaries, I said, look, I mean I don't want – I see this litigation as being part continuing on with it and my time is going to

go skyrocket so I'm prepared to just, you know, cut the fees here and now after I respond and you can have it. And they said, well, are you sure that we can do this. And I said, yeah, I'm sure. I have gone through like ten different times and they still have a right -- they

(p.15)

still -- you know, the risk I took was they still had time.

Q I saw that you put that in your comments.

A I said, that's the risk I'm taking.

Q You were taking the risk that by distributing the money to the beneficiaries and your fees based on the waivers that had been executed that if anybody else came back to try to make a claim that you were assuming that risk?

A Yes. Essentially had medicaid successfully petitioned the judge for extension of time to file a claim and gotten that permission, I was on the hook personally.

Q Did you advise your clients of that, your beneficiary clients?
A Yeah, I told them. I basically said that as a practical matter, you guys you are there, you are in Finland. They are going to look to me as a practical matter and as a legal matter because I'm the executor. That was basically the discussion we had. And unfortunately what is really tragic about this whole case is way back if -- when -- the decedent Mrs. Johnson died in January of '05 -- '04. If at that time, Susan just would have said, fine, you know, you are the executor, here is our fee claim, here is the Hodgson

(p.16)

fee claim in the estate and here is the fee claim for the New York medicaid, it would have been over rather than making this -- filing petition to compel distribution. I couldn't believe it. Rather than fighting me on who has

control of it. It didn't matter who had control of it. Once the money was in the court, all they had to do was file their claim, New York medicaid files their claim, whatever it was. We didn't know what it was at that time. Our position was prove up your claim and then we will look at it. Well, they didn't give us a chance. New York medicaid never got a chance to prove their claim, and we never got a chance to distribute it to them because we were stuck. Once we go through the procedure to notify creditors, that's all I can do. I don't go back and say please file a claim, time is running out.

(p.23)

Q How much of that fee that was taken in the Johnson estate in your judgment -- I'm not going to hold you to an exact amount; it wouldn't be fair -- how much of that fee would you attribute to litigation or work that might have related directly or indirectly to the Aho

estate?
A Most of the -- most of that fee was for the

(p.24)

litigation. It was litigation fee. We could have
charged it to the Aho estate as well.
Q In reality what happened here from what I'm
hearing is that some of the fees that you did not get for
whatever reason in the Aho estate you eventually obtained
in the Johnson estate?
A No, no, because once -- no, because the fees
that I didn't get in the Aho estate that's up to the time
when the person died. Those fees over ten thousand I
didn't get.
Q Your testimony that -- I understand that you
said that --
A I'm the accountant. I'm doing the accounting.
Q You are saying that you did not obtain any
fees from the Johnson estate for any work performed
before the Aho estate was closed; is that your
testimony?

A No, that's not my testimony. That's not my testimony.

Q Is it your testimony that you received ten thousand dollars plus your five hundred dollars in costs for work performed --

A For the Aho estate.

(p.25)

Q -- but that you did not receive any more fees from the Johnson estate for work performed on the Aho estate from the Johnson estate?

A No, no. That's not the way I characterize. The work done on the litigation I characterize that as all for the Johnson estate for the reason, for the reason, for the reason that the -- so when the accounting comes in, the beneficiaries, the ultimate owners of the money, have a bird's eye view what it is. So I don't tell them, okay, we only got this much and, you know, I'm approving my own fees for the Aho estate.

(p. 26)

Q Just generally, can you tell us what you did
for the forty-eight thousand?
A I won the litigation and it began from -- I
mean it was a probate litigation.
MR. ALI: Just so we can keep this clear, we
want to refrain from the word litigation. Let's
talk about the Aho estate and the Johnson estate.
THE WITNESS: I think we are talking cross
purposes because legally speaking once Mrs. Johnson
dies she has a guardian. Then the beneficiaries of
the Aho estate are the people in Finland
automatically. So when you start talking about the
Aho estate and Johnson estate, they are the
beneficiaries. Then they are the Aho estate.

(p.53)

In the meantime, Mrs. Johnson died, and my
position has been that changed the rules, that
changed the rules, because then we have the
beneficiaries in Finland who are the owners of the

24 money subject to creditor claims.

28. Miriam Aho died in June, 2001; Milja Johnson died intestate on January 6, 2004. As the last two paragraphs of Petitioner's 1/31/07 deposition evidence Petitioner took the position that on of 1/6/04 the Aho Estate money (which at that time totaled $130,500.00--as of 1/6/04 Petitioner had been paid $10,500.00 in Aho Estate attorney fees and costs) belonged to the 4 Finnish intestate Johnson Estate heirs, subject to the claims of creditors. Petitioner also took the position that as of 1/6/04 the amount of Petitioner's fees was a matter between Petitioner and owners of the money—the 4 Finnish intestate heirs.

29. From 1/6/04 Petitioner allocated all his attorney time, including probate litigation time with respect to the Motion to Compel Distribution, to the Johnson Estate. Petitioner's position was that the Johnson Estate--the 4 Finnish istestate heirs--were the real parties in interest in the Motion to Compel. *Morales v. Iasis Health Care*, 901 So.2d 965 (Fla. 2nd DCA 2005)

30. Since prior to the death of Milja Johnson Petitioner had taken the position that Ms. Robbins' client, JASA, was not legally entitled to possession of the $130,500.00, after the death of Milja Johnson on 1/6/04, Petitioner did not change his position in this respect. That is clear.

31. After the death of Milja Johnson and after the Johnson Estate letters had been issued by the Palm Beach County Probate Court, Ms. Robbins' client, JASA, sought possession of the money via a Motion to Compel Distribution filed in Palm Beach County. JASA lost that litigation in July 2004 with prejudice pursuant to a Stipulated Settlement and Agreed Order.

32. The record before this Court shows that in July, 2004 the Aho Estate distributed the $130,500.00 to the Johnson Estate and pursuant to the Stipulated Settlement the Johnson Estate paid all the fees of Miller,Canfield, Hodgson Russ and JASA .

33. It took Petitioner some time to realize how TFB was prosecuting the case. TFB intended to have Susan I. Robbins, Esq. and Brian K. Duffey, Esq. perjure themselves on the witness stand by testifying as Mr. Soifer falsely represented at the 11/10/08 hearing:

> 17 He [Kivisto] forced JASA to hire an attorney down
> 18 here. Thus, costing the estate more money in
> 19 attorney's fees, to file that motion to
> 20 compel distribution before he finally agreed
> 21 to take a fee of $10,500 in the Aho estate.

34. Then Mr. Soifer's "expert witness" would testify that most of the Petitioner's Johnson Estate time was in reality Aho Estate time. Mr. Soifer then argues and would argue that Petitioner gouged the "Estates" by taking more than he had agreed to. This is brilliant but false. Mr. Soifer knows this. These people are real pros. This evidence of this testimony is contained in the "Privileged Portions of Petitioner's Bar Disciplinary file".

35. Although there is no documentary evidence in the record before this Court to vary the July, 2004 Stipulation Agreement to substantiate this false allegation, under the R. Regulating the Fla. Bar

this perjured testimony will come in to vary the Stipulation:

36. R. Regulating the Fla. Bar 3-7.6(l) provides:

> (*l*) **Parol Evidence.** Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract may be used only if necessary to resolve issues of excessive fees or excessive costs.

37. First we have a bad faith grievance where there is no right to confront Ms. Robbins as would have been the case had Ms. Robbins filed a Motion to Extend Time to File [Medicaid claim] Claim. Now Petitioner will be set up by the perjured testimony of Ms. Robbins and Mr. Duffey. Checkmate.

38. Petitioner chose not to participate in such corrupted judicial proceedings. As can be seen by the transcripts of the 11/10/08 hearing, fortunately, the Referee, for all intents and purposes, confirmed not only his bias but that the proceedings over which he was presiding had been "fixed." These are serious charges. However, the factual basis has been laid to compel TFB to produce the "Privileged Portions of Petitioner's Bar Disciplinary File".

39. There is more evidence to be collected with respect to the corruption of these proceedings before this Court than the "Privileged portions of Petitioner's Bar Disciplinary File". Asking Petitioner, at this to file, to file his Brief in Support of Petition for

Review would be a mockery of justice. This Court has the authority to compel TFB to produce "Privileged Portions of Petitioner's Bar Disciplinary File".

40. Petitioner submits that this Court has the statutory and constitutional duty, both under the Florida Constitution and the Fourteenth Amendment of the United States Constitution, to compel TFB to produce "Privileged Portions of Petitioner's Bar Disciplinary File".

VI. CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Court issue a Writ of Mandamus to Compel TFB to produce "Privileged portions of Petitioner's Bar Disciplinary File".

VII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular mail to Michael David Soifer, Esq., Bar Counsel, The Florida Bar, 5900 North Andrews Ave., Suite 900, Fort Lauderdale, FL 33309; to Kenneth Lawrence Marvin, Esq., Staff Counsel, and George Rudge, Records Manager, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

VIII. CERTIFICATES OF COMPLIANCE

I hereby certify that the foregoing complies with the font requirements of the Florida Rules and that I have complied with Administrative Order AO04-84 in that a copy of this Petition has been electronically submitted this 20th day of January 2010.

KIVISTO LAW FIRM
1010 Tenth Avenue North, Suite 2
Lake Worth, Florida 33460-2107
Phone: (561) 588-5328; klfjk@aol.com
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By: /jk Kivisto/
J.K. Kivisto
FL Bar # 362638

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-61758-UU

JUSSI K. KIVISTO,

Plaintiff,

v.

MICHAEL DAVID SOIFER,
KENNETH LAWRENCE MARVIN,
MILLER, CANFIELD, PADDOCK AND STONE,
PLC; and, SUSAN I. ROBBINS

Defendants.

PLAINTIFF'S MOTION TO COMPEL
PRODUCTION PURSUANT TO RULE 45
SUBPOENA

Plaintiff respectfully files his Motion to Compel Ronna Friedman Young to produce the documents set out in Rule 45 Subpoena and for grounds states as follows:

1. Plaintiff's Rule 45 Subpoena was served on Ms. Young on 2/28/2011. (Exhibit A)

2. On March 7, 2011 Greenberg,Traurig, counsel for the Defendants Soifer and Marvin, now also representing Ms. Young, served objections to the production of documents. (Exhibit B)

3. Like Defendant Soifer, Ms. Young is a Florida Bar Bar Counsel situated in the same offices as Defendant Soifer in Fort Lauderdale and was the Bar

Counsel in the state court case until she was replaced as Bar Counsel by Defendant Soifer.

4. On December 1, 2006 Ms. Young informed Plaintiff that the Medicaid issue was off the table. (Exhibit C) Therefore, Ms. Young has personal knowledge concerning the circumstances of the Defendants' perjury and fabrication of evidence.

5. Ms. Young has as much access to and control of the documents requested as Defendant Soifer and Marvin. Ms. Young is playing a shell game. Greenberg, Traurig has access to the documents if not actual possession of the documents. This is not a FOIA request to be directed to TFB custodian of records.

6. In their Rule 26 Disclosures, (Exhibit D) Defendants Soifer and Marvin admit to be in possession of a file which they describe as "privileged and/or confidential portions" of Plaintiff's Bar disciplinary file. (TFB Secret File).

7. TFB's Secret File is a key to the whole case. Watergate had its tapes the existence of which was discovered by happen chance. We have our tapes too: TFB Secret File. In Watergate, once the tapes were produced the Nixon presidency was over; similarly, here once TFB Secret File is produced Defendants' smoke and mirror defense will collapse like a house of cards.

8. Defendants Soifer and Marvin have no intention having the TFB Secret File that will sink their ship produced to Plaintiff.

9. First, the Defendants have jointly determined and ensured that no discovery will take place until after the March 11, 2011 Scheduling Conference. All the Defendants announced that they would not be available for depositions until after the March 11, 2001

Scheduling Conference and that it would be more "efficient and appropriate" to discuss discovery "when we are all together". Today the MCPS Defendants inform they will represent JASA in a Rule 45 Subpoena which was returnable March 8, 2011 but will not respond until Monday. (Exhibit E)

10. In her 3/7/2011 email (Exhibit F) Attorney Sharpe states:

> Finally, with respect to the Order Denying the joint motion for stay of discovery, the Bar Defendants have 30 days to request a motion for reconsideration, and we are contemplating such a request.

11. Ms. Young's claims of privilege and confidentiality with respect to the requested documents has been waived. Ms. Young's failure to file a privilege log as required by Local Rule 26.1.G.3, Local Rules Appendix A. Discovery Practices Handbook Rule V.B, and Fed. R. Civ. 26(b)(5). In re Application of Chevron Corp. No. 10-mc-00002 (LAK) 2010 WL 4118093 (S.D.N.Y. Oct. 20, 2010), attached.

12. There is a well establish procedure for the invocation of alleged privileges in response to subpoenas and requests to produce. Ms. Young must enumerate the documents as to which she claims privilege and assert her privilege claims in the manner prescribed by both local and federal rules. Ms. Young cannot rely on "mere conclusory or ipse dixit assertions, for any such rule would foreclose the meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed." von Bulowa by Auersperg v. Bulow, 811 F.2d 136,146 (2d Cir. 1987) (quoting In re Bonanno, 344 F.2d 830, 833 (2d Cir. 1965)

13. These procedures serve important purposes. Privileges can serve to conceal highly relevant evidence that is important to the just resolution of the controversy.

14. Ms. Young's claim that compliance with the subpoena would be unduly burdensome is also conclusory. There is no burden in producing TFB Secret File or any of the other documents set out in the subpoena. Ms. Young, together with Defendants Soifer and Marvin, being Florida Bar prosecutors, have complete access to TFB files including TFB Secret File.

15. Ms. Young's assertions that the document requests are insufficiently particular is without merit. First, there is no uncertainty as to the type of evidence Plaintiff seeks. Ms. Young has refused to provide any information whatsoever about the content of TFB Secret File or other documents requested. Plaintiff cannot reasonably be expected to identify with particularity the contents of TFB files and TFB Secret File where the knowledge of the contents lies exclusively with Ms. Young and Defendants Soifer and Marvin. In Re Application of Chevron Corp, 709 F.Supp. 2d 283, 297 (S.D.N.Y. 2010).

16. Also since Defendants Soifer and Marvin wrote the Default Judgment and Report of Referee based upon TFB files and TFB Secret File, disclosed the TFB files and TFB Secret File to Susan Robbins, Brian K. Duffey, and expert Charles Jeffrey Goldman, Esq., the privileges claimed by Ms. Young have been waived through disclosure to third parties. Disclosure of documents to a testifying expert and to witnesses waives the privileges claimed by Ms. Young. (Exhibit G)

17. At the November 10, 2008 hearing the Referee admitted that Defendant Soifer wrote the default judgment: (at page 7 of the 11/10/08 transcript)

25 THE COURT: All right. A default on

1 the allegation and the merits of the
2 allegation was entered by an order signed by
3 the referee on October 30th, 2008. The
4 findings in that order were discussed in open
5 court.
6 It is true that that order was prepared
7 by Bar counsel, Mr. Soifer, and that I was
8 out of town and just arrived back in town, I
9 believe, on the 30th. And I read through it.
10 And there were a couple of editorial changes
11 I might have made. And a couple of things I
12 would have worded differently.
13 I'm fully aware of my responsibility to
14 make sure the order accurately reflects
what
15 happened. And that in a perfect world I
16 would have dictated the whole thing myself.
17 But as it recites, it came on for hearing,
18 October 20th, and then I was out of town for
19 a whole week or more.
20 And by the time I got it, it was
21 October 30th. And the final hearing was set
22 for November 10th. So time is of the
23 essence.
24 And due to other logistical matters, I
25 signed the order as submitted by The
Florida

1 Bar. I say that, because in the latest copy

of a verified motion duly assigned the case,
it refers to or at least alleges that Bar counsel prepared that order. Which is true.
Nonetheless, the doesn't effect the accuracy of what happened.

18 It is beyond question that Defendant Robbins committed perjury in filing the July 25, 2005 grievance; it is beyond question that TFB prosecutors, Defendants Soifer and Marvin, suborned perjury—they knew then and know now, that Defendant Robbins committed perjury in filing the grievance. Defendant Robbins to this day has not denied that she committed perjury. More importantly Defendants Soifer and Marvin have not required Defendant Robbins to deny the charge.

19. The documentary evidence is clear what the terms of the July, 2004 Settlement Agreement were. The attorney fees were confined to those of Miller,Canfield and HodgsonRuss. The Defendants' allegation that Plaintiff, the winning attorney, would permit the losing attorneys to dictate his fees, (and take less than the losing attorneys) is an Alice in Wonderland fantasy. The owners of the money in question, the four Finnish beneficiaries, Plaintiff's clients, under Florida probate law, set the Plaintiff's fees, not disgruntled losing attorneys and compromised prosecutors.

20. Plaintiff has pled a prima facie case perjury and fabrication of evidence. The Defendants have not denied the allegations of perjury and fabrication of evidence. The evidence of perjury and fabricaton of evidence is contained in TFB files and the TFB Secret File.

21. Because the Defendants' perjury and fabrication of evidence relate to the Defendants' corruption of the judicial process they trigger the crime fraud-exception which vitiates any otherwise applicable privilege, including the privileges claimed by Ms. Young. In re Chevron Corp, No. 10-mc-21 (D.N.M. Sept 13, 2010); . In re Application Chevron Corp, No. 10-cv-1146 (S.D. Cal. Sept. 10, 2010); Chevron Corp v. Champ. No. 10-mc-27(W.D.N.C. Aug. 30, 2010), attached.

22. Fabrication of evidence and fixing judicial proceedings constitute obstruction of justice under both federal and state law and also constitute violations of 18 U.S.C. §§ 242 & 241. Not even the president of the United States has the absolute power that TFB prosecutors arrogate to them. United States v. Nixon, 418 U.S. 683, 709 (1974):

> But this presumptive privilege must be considered in light of our historic commitment to the rule of law. This is nowhere more profoundly manifest than, in our view, that "the twofold aim [of criminal justice] is that guilt shall not escape or innocence suffer." Berger v. United States, 295 U.S. at 88. We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To

> ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.

23. Finally the documents are discoverable under § 1983 pursuant to the reasoning of the Supreme Court in Skinner v. Switzer, slip opinion, March 7, 2011, attached.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 9, 2011 I filed the foregoing original Request with the Clerk of the Court by hand delivery. The CM/ECM system will send notice of the filing electronically Karusha Y. Sharpe, Esq., Greenberg Traurig, 101 East College Ave., Tallahassee, FL 32301; W. Scott Turnbull, Esq. Crary, Buchanan, et al 555 Colorado Avenue, Stuart, FL 34994 and, Kimberley K. Kefalas, Esq., Suzanne L. Wahl, Esq. and Robert J. Wierenga, Esq., MillerCanfield, 101 North Main Street, 7th Floor, Ann Arbor , MI 48104.

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